

APPEAL NO. 031102
FILED JUNE 16, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 2, 2003. The hearing officer determined that the respondent (claimant herein) was entitled to supplemental income benefits (SIBs) for the ninth quarter. The appellant (carrier herein) files a request for review, contending that the claimant had not made a good faith effort to obtain employment commensurate with his ability to work during the qualifying period for the ninth quarter, and that the claimant's unemployment was not a direct result of his impairment from his compensable injury. There is no response from the claimant contained in our file.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer as modified for a clerical error.

Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) set out the statutory and administrative rule requirements for SIBs. At issue, in this case, is whether the claimant met the good faith job search requirement of Section 408.142(a)(4) through a total inability to work as set out in Rule 130.102(d)(4). The parties stipulated that the qualifying period at issue was from October 14 through January 12, 2003. Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. The hearing officer found that during the qualifying period of the ninth quarter the claimant had no ability to work, that there were narrative reports from Dr. G and Dr. B which "individually and collectively" specifically explains how the injury causes a total inability of the claimant to work, and that there is no other record which shows that the claimant is able to work. The carrier contends that reliance on these reports is misplaced because neither doctor is qualified to render such an opinion because they are not psychiatrists. Our review of Dr. B's report demonstrates that the claimant is unable to work due to his compensable injury for various reasons, among them the inability to concentrate because of strong narcotic medication, and because the claimant is "always in pain." Dr. B does not indicate that the only reason the claimant cannot work is because of psychological condition. The hearing officer did not err in his reliance on Dr. B's medical narrative. Further, we note that psychiatry is a component of medicine and find no merit to the carrier's argument that a medical doctor, who is not a psychiatrist, is unqualified to render an opinion on psychological disorders.

Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence, we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

In his decision, the hearing officer gives a detailed explanation as to why he found that Dr. G and Dr. B's narratives showed that the claimant had a total inability to work and why he did not believe that a functional capacity evaluation showed that the claimant had an ability to work. Applying the standard of review above, we do not find either the factual findings or the decision of the hearing officer to be contrary to the overwhelming evidence.

Finally, we note that in its appeal, the carrier seeks correction of a clerical error. On May 19, 2003, the Texas Worker's Compensation Commission issued an Order On Motion To Correct Clerical Error, granting the carrier's request. However, as the carrier points out in its appeal, not all of its exhibits were listed in the Decision and Order or the Order On Motion To Correct Clerical Error. Consequently, we modify the Hearing Officer's Decision and Order regarding Evidence Presented to reflect that the correct exhibits for the carrier are as follows:

1. TWCC 45;
2. FCE, Dr. Daniel Boyle (19 pages);
3. TWCC 21;
4. Medical Report, Dr. A, M.D. (6 pages);
5. Correspondence, Dr. A, dated March 2, 2003;
6. Medical Reports, Dr. P (10 pages); and
7. DRIS notes (15 pages).

As modified, the decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **NATIONAL FIRE INSURANCE COMPANY OF HARTFORD** and the name and address of its registered agent for service of process is:

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL
DALLAS, TEXAS 75201.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Margaret Turner
Appeals Panel